CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Caitlin Schwartz	Team: Squad #10	CCRB Case #: 201603006	☐ Force ☑ Abuse	☐ Discourt. ☐ O.L.	☐ U.S. ☐ Injury

Incident Date(s) Wednesday, 04/06/2016 7:50 PM	Location of Incident: § 87(2)(b)		Precinct: 67	18 Mo. SOL 10/6/2017	EO SOL 10/6/2017

Date/Time CV Reported Thu, 04/07/2016 3:52 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Thu, 04/07/2016 3:52 PM

Complainant/Victim	Type	Home Address
■■■■■	■■■	■■■■■■

Subject Officer(s)	Shield	TaxID	Command
1. POM Mark Demarco	10030	948870	067 PCT
2. POM James Astuto	16036	926611	067 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM James Astuto	Abuse: PO James Astuto refused to provide his name and shield number to § 87(2)(b)	■■■■■
B.POM Mark Demarco	Abuse: PO Mark Demarco refused to provide his name and shield number to § 87(2)(b)	■■■■■

Case Summary

On April 6, 2016, at approximately 4:30 p.m., § 87(2)(b) noticed a marked police van on § 87(2)(b) in Brooklyn. The van was parked near the corner of § 87(2) which is the same side of the street on which § 87(2)(b) s medical practice is located. § 87(2)(b) approached the van to speak to the officers therein, identified via the investigation as PO Mark DeMarco and PO James Astuto, both of the 67th Precinct. PO DeMarco and PO Astuto were assigned to a shooting suppression post. When § 87(2)(b) approached, PO Demarco was seated in the driver's seat, and PO Astuto in the passenger's seat. § 87(2)(b) complained to the officers that the police presence was causing him to lose patients. The officers informed § 87(2)(b) that they were there due to shootings that had occurred in the area. § 87(2)(b) reported that during his conversation with the officers, he requested the officers' names and shield numbers, at which point PO Astuto allegedly told him that the officers could not provide that information (**Allegation A**). PO Demarco allegedly did not respond to § 87(2)(b) s request (**Allegation B**). § 87(2)(b) then walked away from the officers.

There was no video footage captured of this incident.

Mediation, Civil and Criminal Histories

- § 87(2)(b) rejected mediation.
- As of July 1, 2016, § 87(2)(b) has not filed a notice of claim regarding this incident (Board Review 12).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- This complaint is § 87(2)(b) s first CCRB complaint (Board Review 09).
- PO Astuto has been a member of the NYPD for 15 years. PO Astuto has had one prior CCRB allegation against him, and it was closed as unsubstantiated (Board Review 10).
- PO DeMarco has been a member of the NYPD for five years. He has five previous CCRB allegations against him, involving two cases. Among these allegations, there is neither a substantiated allegation § 87(2)(g) (Board Review 11).

Findings and Recommendations

Explanation of Subject Officer Identification

- Upon filing this complaint, § 87(2)(b) provided the officers' vehicle's license plate number. Fleet Services indicated that the vehicle was assigned to Patrol Borough Brooklyn South. The 67th Precinct roll call did not list any officer as assigned to the vehicle, and the Daily Vehicle Assignment Sheet indicated that the vehicle was at the stationhouse at the time of the incident. The 67th Precinct additionally indicated that PO Astuto and PO DeMarco were assigned to § 87(2) from 3 p.m. until 11:35 p.m., but indicated that they were working on foot. Given that PO DeMarco and PO Astuto were assigned to the exact location that § 87(2)(b) had observed the police van, during the same time frame at which he observed the van, they were

interviewed for the investigation. During their CCRB interviews, they testified that they were working in a marked van, and confirmed that they interacted with §87(2)(b)

Allegation A—Abuse of Authority: PO James Astuto refused to provide his name and shield number to §87(2)(b)

Allegation B—Abuse of Authority: PO Mark DeMarco refused to provide his name and shield number to §87(2)(b)

§87(2)(b) PO Astuto and PO DeMarco §87(2)(g) §87(2)(b) said that §87(2)(b) approached the officers' van while the officers were seated therein, and told them that the police presence on the block was affecting his business by scaring away his patients. §87(2)(b) and PO DeMarco both testified that the officers told §87(2)(b) that they were there per their sergeant's instructions, but PO Astuto said only that he told §87(2)(b) that the officers were there working a shooting post. PO DeMarco corroborated that the officers told §87(2) that they were there due to shootings in the immediate vicinity.

§87(2)(b) alleged that he asked PO Astuto and PO DeMarco for their names and shield numbers, and the name of the sergeant who had sent them to the location, but the officers did not provide the requested information. Neither PO Astuto nor PO DeMarco recalled §87(2)(b) asking for either of their name or shield number. They both affirmed that as they were in uniform, their shields were prominently displayed, and neither took any action to conceal this information from §87(2)(b) PO DeMarco testified that the officers instructed §87(2)(b) to go to the 67th Precinct stationhouse, which is located approximately five blocks away from the incident location, to speak to the officers' supervisor should he have any additional questions. PO Astuto did not recall §87(2)(b) asking for any other information from the officers besides for asking why they were there. PO Astuto and PO DeMarco both testified that their interaction with §87(2)(b) was brief, and he walked away without mentioning anything about filing a complaint against them.

§87(2)(b) noted down the license plate number of the officers' van and provided it to the investigation while he did not provide either of the involved officers' names or shield numbers.

§87(2)(g)

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Squad:

Investigator: _____ _____ _____
                    Signature   Print   Date

Squad Leader: _____ _____ _____
                    Title/Signature   Print   Date

Reviewer: _____ _____ _____
                    Title/Signature   Print   Date

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